



OFFICE OF THE GOVERNOR

CHESTER J. CULVER
GOVERNOR

PATTY JUDGE
LT. GOVERNOR

April 28, 2010

The Honorable Michael Mauro
Secretary of State
State Capitol Building
L O C A L

Dear Mr. Secretary:

I hereby disapprove and transmit to you Senate File 2343, an Act relating to the appointment of judicial officers and senior judges, without my signature, in accordance with Article III, Section 16 of the Constitution of the State of Iowa.

I support the principles behind much of Senate File 2343 including: Section 4 that provides additional flexibility for the residency requirements for associate district court judges by requiring residency within the judicial district rather than the current requirement of county; Section 5 that provides additional flexibility in the selection of magistrates by allowing magistrates to be residents of a contiguous county; and Sections 6 through 8 that make technical changes to the senior judge program.

However, I am unable to the approve Senate File 2343 for the following reasons. Section 1 of this bill creates an additional requirement on the appointment of lowans to the district judicial nominating commissions by requiring that only one appointed commissioner may be appointed from each county unless there are fewer counties than commissioners. While I support the concept of geographic representation among the appointed members of the district judicial nominating commissions, I believe this is most appropriately applied as a criterion in choosing individuals for appointment to the commissions rather than as a statutory mandate. By placing this requirement in law, qualified individuals who wish to serve on the commissions may be excluded from service simply because there is currently a member of the commission from that county.

Sections 2 and 3 of this bill substantially alter the process for filling judicial vacancies, by allowing the Chief Justice of the Supreme Court the authority to delay the appointment of judges and associate judges for up to one year. Under Article V, Section 10 of the Constitution of the State of Iowa the responsibility for determining judicial districts and the number of judges within a judicial district is assigned to the General Assembly. I believe the Constitution has appropriately placed these responsibilities with the General Assembly which is more immediately accountable to lowans. Section 2, shifts much of the authority

vested by the Constitution with the General Assembly to the Chief Justice by allowing the Chief Justice to delay an appointment for “budgetary reasons” with no further explanation required.

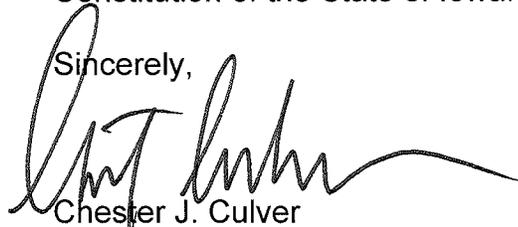
With this change, the Chief Justice could for all practical purposes determine the number of judges in each judicial district by deciding which judicial openings are filled and which are delayed. To delay judicial appointments for up to one year for “budgetary reasons” without any public accountability or additional criteria is excessively vague. Iowans expect more precise standards for determining if judicial vacancies are filled. Furthermore, allowing such discretion creates additional potential to limit Iowans access to courts and delay court proceedings. The sunset provision repealing the sections in 2013 is insufficient to alleviate my concerns about this shift in responsibilities between the branches of government.

The remaining sections of this bill advance important public policy objectives including modifying the residency restrictions for district associate judges and magistrates and modifying the requirements for senior judges. I have no objections to these sections.

I commend the Judicial Branch under the Chief Justice’s leadership for continuing to provide access to the Courts to Iowans even under challenging budgetary circumstances.

For all these reasons, I hereby disapprove and transmit to you, without my signature, Senate File 2343, in accordance with Article III, Section 16, of the Constitution of the State of Iowa.

Sincerely,

A handwritten signature in black ink, appearing to read "Culver", with a long, sweeping horizontal flourish extending to the right.

Chester J. Culver
Governor

cc: Secretary of the Senate
Chief Clerk of the House

CJC: slm



Senate File 2343

AN ACT
RELATING TO THE APPOINTMENT OF JUDICIAL OFFICERS AND SENIOR
JUDGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 46.3, Code 2009, is amended to read as follows:

46.3 Appointment of district judicial nominating commissioners.

1. The governor shall appoint five eligible electors of each judicial election district to the district judicial nominating commission.

2. Appointments The appointments made by the governor shall be to staggered terms of six years each and shall be made in the month of January for terms commencing February 1 of even-numbered years.

3. ~~No more than a~~ A simple majority of the commissioners appointed shall be of the same gender.

4. Beginning with terms commencing February 1, 2012, there shall not be more than one appointed commissioner from a county within a judicial election district unless each county within the judicial election district has an appointed or elected commissioner or the number of appointed commissioners exceeds the number of counties within the judicial election district. This subsection shall not be used to remove an appointed commissioner from office prior to the expiration of the commissioner's term.

Sec. 2. NEW SECTION. 602.2301 **Judicial officer appointment — delay.**

1. Notwithstanding section 46.12, the chief justice may order the state commissioner of elections to delay, for budgetary reasons, the sending of a notification to the proper judicial nominating commission that a vacancy in the supreme court, court of appeals, or district court has occurred or will occur. For each of the first five delays ordered by the chief justice in the fiscal year beginning July 1, 2010, and for each of the first five delays ordered by the chief justice in each fiscal year thereafter, the delay shall not exceed one hundred eighty days. For each delay ordered by the chief justice in excess of the first five delays in the fiscal year beginning July 1, 2010, and for each delay ordered by the chief justice in excess of the first five delays in each fiscal year thereafter, the delay shall not exceed one year.

2. Notwithstanding sections 602.6304, 602.7103B, and 633.20B, the chief justice may order any county magistrate appointing commission to delay, for budgetary reasons, publicizing the notice of a vacancy for a district associate judgeship, associate juvenile judgeship, or associate probate judgeship. For each of the first five delays ordered by the chief justice in the fiscal year beginning July 1, 2010, and for each of the first five delays ordered by the chief justice in each fiscal year thereafter, the delay shall not exceed one hundred eighty days. For each delay ordered by the chief justice in excess of the first five delays in the fiscal year beginning July 1, 2010, and for each delay ordered by the chief justice in excess of the first five delays in each fiscal year thereafter, the delay shall not exceed one year.

3. Notwithstanding section 602.6403, subsection 3, if a magistrate position is vacant due to a death, resignation,

retirement, an increase in the number of positions authorized, or to the removal of a magistrate, the chief justice may order any county magistrate appointing commission to delay, for budgetary reasons, the appointment of a magistrate to serve the remainder of an unexpired term. For each of the first five delays ordered by the chief justice in the fiscal year beginning July 1, 2010, and for each of the first five delays ordered by the chief justice in each fiscal year thereafter, the delay shall not exceed one hundred eighty days. For each delay ordered by the chief justice in excess of the first five delays in the fiscal year beginning July 1, 2010, and for each delay ordered by the chief justice in excess of the first five delays in each fiscal year thereafter, the delay shall not exceed one year.

Sec. 3. NEW SECTION. 602.6113 Apportionment of certain judicial officers — substantial disparity.

Notwithstanding section 602.6201, 602.6301, 602.6304, 602.7103B, or 633.20B, if a vacancy occurs in the office of a district judge, district associate judge, associate juvenile judge, or associate probate judge, and the chief justice of the supreme court makes a finding that a substantial disparity exists in the allocation of such judgeships and judicial workload between judicial election districts, the chief justice may apportion the vacant office from the judicial election district where the vacancy occurs to another judicial election district based upon the substantial disparity finding. However, such a judgeship shall not be apportioned pursuant to this section unless a majority of the judicial council approves the apportionment. This section does not apply to a district associate judge office authorized by section 602.6302 or 602.6307.

Sec. 4. Section 602.6305, subsections 2 and 3, Code 2009, are amended to read as follows:

2. A person does not qualify for appointment to the office of district associate judge unless the person is at the time of appointment a resident of the county judicial election district in which the vacancy exists, licensed to practice law in Iowa, and will be able, measured by the person's age at the time of appointment, to complete the initial term of office prior to reaching age seventy-two. An applicant for district associate judge shall file a certified application form, to be provided by the supreme court, with the chairperson of the county magistrate appointing commission.

3. A district associate judge must be a resident of a ~~county~~ the judicial election district in which the office is held during the entire term of office. A district associate judge shall serve within the judicial district in which appointed, as directed by the chief judge, and is subject to reassignment under section 602.6108.

Sec. 5. Section 602.6404, subsection 1, Code Supplement 2009, is amended to read as follows:

1. A magistrate shall be a resident of the county of appointment or a resident of a county contiguous to the county of appointment during the magistrate's term of office. However, a resident of the county of appointment shall be the preferred applicant for appointment over a resident of a county contiguous to the county of appointment. A magistrate shall serve within the judicial district in which appointed, as directed by the chief judge, provided that the chief judge may assign a magistrate to hold court outside of the county of ~~the magistrate's residence~~ appointment for the orderly administration of justice. A magistrate is subject to reassignment under section 602.6108.

Sec. 6. Section 602.9203, subsection 1, Code 2009, is amended to read as follows:

1. A supreme court judge, court of appeals judge, district judge, district associate judge, full-time associate juvenile judge, or full-time associate probate judge, who qualifies under subsection 2 may become a senior judge by filing with the clerk of the supreme court a written election in the form specified by the ~~court administrator~~ supreme court. The election shall be filed within six months of the date of retirement.

Sec. 7. Section 602.9203, subsection 2, paragraph c, Code 2009, is amended to read as follows:

c. Agrees in writing on a form prescribed by the ~~court administrator~~ supreme court to be available as long as the judicial officer is a senior judge to perform judicial duties as assigned by the supreme court for an aggregate period of thirteen weeks out of each successive twelve-month period.

Sec. 8. Section 602.9203, subsection 5, paragraph b, Code 2009, is amended to read as follows:

b. A senior judge may be reappointed to ~~an additional two-year~~ a one-year term upon attaining seventy-eight years of age and to one succeeding one-year term, at the discretion

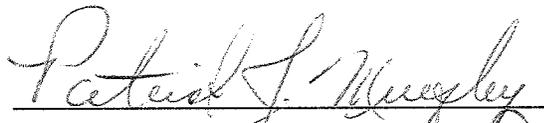
of the supreme court, if the judicial officer meets the requirements of subsection 2.

Sec. 9. REPEAL. Sections 602.2301 and 602.6113, as enacted in this Act, are repealed July 1, 2013.



JOHN P. KIBBIE

President of the Senate



PATRICK J. MURPHY

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2343, Eighty-third General Assembly.



MICHAEL E. MARSHALL

Secretary of the Senate

Approved _____, 2010

CHESTER J. CULVER

Governor